

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 11 of 1995

in

SPECIAL CIVIL APPLICATION No 2059 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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PT VAKHARIA

Versus

COMPETENT AUTHORITY & 2

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Appearance:

MR PM BHATT for Petitioner

MR DC DAVE for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

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CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 01/08/97

This appeal is filed against the order passed by the learned single Judge dismissing the Special Civil Application No. 2059 of 1992 on February 16, 1994.

2. The appellants- petitioners have approached this court by filing the above petition under article 226 of the Constitution for appropriate writ, direction or order quashing and setting aside the order passed by the authorities under the Urban Land(Ceiling & Regulation) Act 1976 (hereinafter referred to as "the Act"). The case of the appellants was that they had filed an application under section 20 of the Act on March 7,1987. Though said application was pending,and not disposed of notification under sub-section (1) of Section 10 of the Act was issued and further proceedings were also taken and orders were passed under sub section (5) of Section 10 of the Act.

3. Mr. Bhatt, learned counsel for the appellants relied upon a Full Bench decision of this Court in Avanti Organization vs. Competent Authority 1989 30 (1) GLR 400 contended that the Full Bench of this Court held that if application under section 20 is pending, the Government should not proceed with the matter under the Act till that application is decided. The learned counsel for the appellants contends that when the application was not disposed of, it was incumbent upon the authorities as per the law laid down by the Full Bench in Avanti Organisation(supra) not to have proceeded with the matter

3. We do not see substance in the argument of the learned counsel for the appellants. As observed by the learned single Judge, the petitioners-appellants have not drawn the attention of the competent authority or appellate authority to the said fact. The authorities were therefore, not aware of the fact regarding pendency of application. Moreover,it appears that the said application was rejected on March 14,1993. Learned counsel for the appellant admits that against said rejection of the application, appellants have not proceeded further and the order stands. In these circumstances also we do not see any reason to exercise our extraordinary power under article 226 of the Constitution.

4. It also appears from the record that earlier also an application under Section 20(1) of the Act was made. But that application was made by the wife of the present

appellant no.1. It was registered as Case No 764/76 and that application was rejected on January 20,1989. Now if it were so, the notification under sub section (1) of section 10 which was issued on May 21,1990 could not be said to be illegal , unlawful or contrary to law. Thus in any case when once an application was made and the same was rejected, obviously the authorities were not bound to consider the second application.

5. In the circumstances we do not see any reason to exercise our extra ordinary powers under article 226 of the Constitution of India. Hence the Letters Patent Appeal is dismissed. Notice discharged. No order as to costs.

(C.K.Thakker.J)

(S.D.Pandit.J)